

Rule 4.117 would be added to the California Rules of Court to read:

1 **Rule 4.117. Qualifications for appointed trial counsel in capital cases**

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3 **(a) [Purpose]** This rule defines minimum qualifications for attorneys
4 appointed to represent persons charged with capital offenses in the
5 superior courts. These minimum qualifications are designed to promote
6 adequate representation in death penalty cases and to avoid unnecessary
7 delay and expense.

8
9 **(b) [General qualifications]** In cases in which the death penalty is sought,
10 the court must assign qualified trial counsel to represent the defendant.
11 The attorney may be appointed only if the court, after reviewing the
12 attorney's background, experience, and training, determines that the
13 attorney has demonstrated the skill, knowledge, and proficiency to
14 diligently and competently represent the defendant. An attorney is not
15 entitled to appointment simply because he or she meets the minimum
16 qualifications.

17
18 **(c) [Designation of counsel]**

19
20 (1) If the court appoints more than one attorney, one must be
21 designated lead counsel and meet the qualifications set forth in (d)
22 or (f) and at least one other must be designated associate counsel
23 and meet the qualifications set forth in (e) or (f).

24
25 (2) If the court appoints only one attorney, that attorney must meet the
26 qualifications set forth in (d) or (f).

27
28 **(d) [Qualifications of lead counsel]** To be eligible to serve as lead
29 counsel, an attorney must:

30
31 (1) Be an active member of the State Bar of California;

32
33 (2) Be an active trial practitioner with at least 10 years' litigation
34 experience in the field of criminal law;

35
36 (3) Have prior experience as lead counsel in either

37
38 (A) At least 10 serious or violent felony jury trials, including at
39 least 2 murder cases, tried to argument, verdict, or final
40 judgment; or
41

1 (B) At least 5 serious or violent felony jury trials, including at
2 least 3 murder cases, tried to argument, verdict, or final
3 judgment;

4
5 (4) Be familiar with the practices and procedures of the criminal
6 courts;

7
8 (5) Be familiar with and experienced in the use of expert witnesses
9 and evidence, including, but not limited to, psychiatric and
10 forensic evidence;

11
12 (6) Have completed within two years prior to appointment at least 15
13 hours of capital case defense training approved for minimum
14 continuing legal education (MCLE) credit by the State Bar of
15 California; and

16
17 (7) Have demonstrated the necessary proficiency, diligence, and
18 quality of representation appropriate to capital cases.

19
20 **(e) [Qualifications of associate counsel]** To be eligible to serve as
21 associate counsel, an attorney must:

22
23 (1) Be an active member of the State Bar of California;

24
25 (2) Be an active trial practitioner with at least three years' litigation
26 experience in the field of criminal law;

27
28 (3) Have prior experience as

29
30 (A) Lead counsel in at least 10 felony jury trials tried to verdict,
31 including 3 serious or violent felony jury trials tried to
32 argument, verdict, or final judgment; or

33
34 (B) Lead or associate counsel in at least 5 serious or violent
35 felony jury trials, including at least 1 murder case, tried to
36 argument, verdict, or final judgment;

37
38 (4) Be familiar with the practices and procedures of the criminal
39 courts;

40
41 (5) Be familiar with and experienced in the use of expert witnesses
42 and evidence, including, but not limited to, psychiatric and forensic
43 evidence;

1
2 (6) Have completed within two years prior to appointment at least 15
3 hours of capital case defense training approved for MCLE credit
4 by the State Bar of California; and
5

6 (7) Have demonstrated the necessary proficiency, diligence, and
7 quality of representation appropriate to capital cases.
8

9 **(f) [Alternative qualifications]** The court may appoint an attorney even if
10 he or she does not meet all of the qualifications set forth in (d) or (e) if
11 the attorney demonstrates the ability to provide competent
12 representation to the defendant. In making this determination, the court
13 must consider whether the attorney meets the following qualifications:
14

15 (1) Be an active member of the State Bar of California or admitted to
16 practice pro hac vice pursuant to rule 983;
17

18 (2) Have demonstrated the necessary proficiency, diligence, and
19 quality of representation appropriate to capital cases;
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21 (3) The attorney has had extensive criminal or civil trial experience;
22

23 (4) Although not meeting the qualifications set forth in (d) or (e), the
24 attorney has had experience in death penalty trials other than as
25 lead or associate counsel;
26

27 (5) Be familiar with the practices and procedures of the criminal
28 courts;
29

30 (6) Be familiar with and experienced in the use of expert witnesses
31 and evidence, including, but not limited to, psychiatric and forensic
32 evidence;
33

34 (7) The attorney has had specialized training in the defense of persons
35 accused of capital crimes, such as experience in a death penalty
36 resource center;
37

38 (8) The attorney has ongoing consultation support from experienced
39 death penalty counsel;
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41 (9) The attorney has completed within the past two years prior to
42 appointment at least 15 hours of capital case defense training
43 approved for MCLE credit by the State Bar of California; and

1
2 (10) The State Bar of California’s Board of Legal Specialization has
3 certified the attorney as a criminal law specialist.
4

5 (g) [Public defender appointments] When the court appoints the Public
6 Defender under Penal Code section 987.2, the attorney from that office
7 or agency designated as lead counsel should meet the qualifications
8 described in (d) or qualify under (f), and the attorney designated as
9 associate counsel, if any, should meet the qualifications described in (e)
10 or qualify under (f).

11
12 (h) [Standby or advisory counsel] When the court appoints standby or
13 advisory counsel to assist a self-represented defendant, the attorney
14 must qualify under subdivision (d) or (f) of this rule.